

### **Remarks**

Claims 1 – 47 are currently Pending.

The Examiner has rejected claim 47 under 35 USC 112. Claim 47 has been amended to depend from claim 46.

### **Election/Restrictions**

The Examiner has issued a restriction requirement under 35 USC 121 on a national phase application of a PCT International Application.

As stated at Page 1, line 3ff, (see preliminary amendment filed concurrently with the national phase entry, this application is a National Phase Application of PCT/IL03/00971 having International Filing Date of 17<sup>th</sup> November 2003.

The Examiner is respectfully referred to the Manual for Patent Examining Practice (MPEP) 1893.03(d) Unity of invention [R3] which states:

Examiners are reminded that unity of invention (*not restriction*) practice is applicable in international applications (both Chapter I and II) *and in national stage applications submitted under 35 U.S.C. 371*. (Emphasis added).

According to the MPEP, Species Rejections can be made in a PCT National Phase Application, provided that lack of unity of invention between the species is demonstrated, as per MPEP 18.20, which mandates a specific form in which the rejection should be made, viz:

#### **§ 18.20 National Stage Election of Species in 35 U.S.C. 371 Applications**

This application contains claims directed to more than one species of the generic invention. ***These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.***

The species are as follows:

**Here insert Species**

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

However, instead of referring to unity of invention, the Examiner has referred to *a search and examination burden* (Page 3, last full paragraph). The search burden is relevant to U.S. restriction practice only, which is not allowed in a National Stage of a PCT application.

Furthermore, the Examiner explicitly refers on page 4, 2<sup>nd</sup> full paragraph, to the species as being "patentably distinct". Unity of invention is blind to whether the species are patentably distinct, but is only interested in whether there is *a common inventive feature*.

The Examiner has *not argued* that the three species *lack a common inventive feature*.

Furthermore, no objection as to lack of unity was made at the International stage. There is thus *no prima facie case* and hence *no obligation on the applicant* to make an election.

Use of U.S. restriction practice at the national phase is a breach of the PCT requirements.

Examiner is respectfully requested to withdraw the restriction requirement as it is improper.

Applicant respectfully awaits the first office action on the merits.

Respectfully submitted,

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